In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 4537 of 2006

Date of Decision: 8.5.2007

Sukhdev Singh

…Petitioner

Versus

The Pepsu Road Transport Corporation and another

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

PRESENT: Mr. R.K. Arora, Advocate,

for the petitioner.

Mr. S.P. Garg, Advocate,

for the respondents.

JUDGMENT

M.M. KUMAR, J

In the instant petition filed under Article 226 of the Constitution the prayer made by the petitioner is for issuance of a writ in the nature of mandamus directing the respondents to pay him pension and other retiral benefits by calculating his qualifying service from his initial date of appointment. The petitioner has also sought quashing of order dated 4.1.2002 (P-7), whereby his claim to deposit the amount of monthly contribution towards provident fund and

consequently requiring the respondent Corporation to contribute equal share towards his subscription of provident fund, has been declined.

Brief facts of the case are that the petitioner joined the service of the respondent Corporation as Helper w.e.f. 5.12.1972. Vide order dated 17.3.1973, he was ordered to be appointed as Helper in the scale of Rs. 80-2-90/3-120 plus usual allowances as may be enforced from time to time against vacant post w.e.f. 5.12.72 (P-1). Vide order dated 12.12.1995, the services of the petitioner were regularised as Fitter w.e.f. 5.12.1973 (P-2). On 15.6.1992, the regulations, namely, the Pepsu Road Transport Corporation Employees/Pension/Gratuity and General Provident Fund Regulations, 1992 (for brevity, 'the Regulations') came into being (P-3). Prior to that the posts in the respondent Corporation were not pensionable and the employees were governed by the Scheme with respect of General Provident Fund. The contributions to the provident fund were to be made by the employees as well as by the employer. In the case of the petitioner, the respondent Corporation started paying its contribution w.e.f. 1.12.1976. Prior to that for about four years neither the employer took the contribution from the petitioner nor made its own contribution. The petitioner and other similarly situated persons through counsel sent a representation to the respondent Corporation on 17.5.2000, showing their willingness to pay their contributions w.e.f. the dates they were regularly appointed. The respondent Corporation was also requested to contribute its share

of the G.P.F. (P-5). Thereafter, C.W.P. No. 8383 of 2001 was filed by the petitioner and others in this Court for directing the respondents to treat their entire service from the date of their joining as qualifying service for the purpose of pension and benefits under the pension Scheme. The aforementioned petition was disposed of by a Division Bench of this Court vide order dated 1.6.2001, directing respondent No. 1 to consider and take action on the representation, dated 17.5.2000 within a period of four months of the receipt of copy of the order (P-6). The representation has been declined vide impugned order dated 4.1.2002 (P-7). The petitioner retired from service w.e.f. 30.9.2002 and while releasing him pension and other retiral benefits, his qualifying service has been calculated as 30 years 9 months and 12 days by excluding the service rendered by him from 5.12.1972 to 31.11.1976 on the ground that he had not contributed towards provident fund for the aforementioned period.

The matter is not res-integra as the issue raised in the instant petition has already been settled by this Court in the case of **Dharam Pal v. The Superintending Engineer, Operation Circle UNBVNL, Karnal and another** (CWP No. 1150 of 2005, decided on 21.11.2006). In that case reliance has been placed on a Full Bench judgment of this Court in the case of **Kesar Chand v. State of Punjab, 1988 (2) PLR 223** and two Division Bench judgments in the cases of **Hazura Singh v. State of Punjab, 2004 (1) SCT 695** and **Mangat Ram v. Haryana Vidyut Prasaran Nigam Ltd., 2005 (4) SCT 302**.

On principle, precedents as well as the rules, the claim of the petitioner deserve to be accepted. Accordingly, we allow the writ petition. The petitioner is held entitled to computation of the period of service rendered by him w.e.f. 5.12.1972 to 31.11.1976 as qualifying service. The employer's contribution in the provident fund drawn by the petitioner shall be adjusted and set off from the arrears which may become payable after the afore-mentioned computation. The respondents shall undertake the exercise of computation of arrears and complete the same within a period of two months from the date a certified copy of this order is supplied to them. The petitioner shall also be entitled to interest on the arrears after setting off employer's contribution from provident fund @ 8 percent per annum from the date the arrears were payable till the date of payment. However, the arrears resulting from re-calculation of pay/pension after adding the aforementioned period of service shall be confined only to three years two months preceding the date of filing of the writ petition, which is 21.3.2006.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

8.5.2007
Pkapoor